National Credit Union Administration

July 8, 1997

John P. Galligan, Director, Card Technology Division
Financial Management Service
U.S. Department of the Treasury
Room 526, Library Center
401 14th Street, S.W.
Washington, D.C. 20227

Re: Notice of Proposed Rulemaking

Dear Mr. Galligan:

These comments are submitted concerning the proposed rule entitled "Electronic Benefits, Selection and Designation of Financial Institutions as Financial Agents." 62 Fed. Reg. 25572 (May 9, 1997) to be codified at 31 C.F.R. Part 207.

It is important to encourage federally insured credit unions, as member-owned and service-oriented cooperatives, to participate as Financial Agents in the Department of Treasury (DOT), Financial Management Service's (Service's) electronic benefits transfer (EBT) program. Historically, credit unions have reached out to people of small means to provide low or no fee accounts with favorable rates of return and loans at fair rates. The underlying philosophy of the credit union movement is "people helping people." Thus, credit unions are ideally suited for reaching the persons the EBT program is being established to help.

Below are specific comments on the proposal, as well as comments on some additional issues that need to be addressed before a final rule can be issued.

Section Analysis

Proposed §§207.1 and 207.2 state that financial institutions shall be designated to act as financial agents of the United States. The regulation is silent as to what criteria will be used to designate financial agents and how financial institutions apply. There is a passing reference in the preamble to an Invitation for Expression of Interest, but no further information is provided. 62 Fed. Reg. 25572, 25576. Interested credit unions need to know the requirements and procedures they must follow to participate.

Proposed §207.3(a)(1) states that the accounts may only be closed at the direction of the Service. In the event recipients abuse their privileges or engage in fraud resulting in a loss to a financial institution, the rule should allow a financial institution to close the account. The rule should also address under what circumstances the Service would

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close an account and clarify that it is the Service's responsibility to resolve eligibility issues.

This section also provides that each account must be "eligible" for federal deposit insurance. It is sufficient if the rule provides that accounts must be maintained at a federally insured financial institution. Otherwise, the final rule must clarify the term "eligible" and whether the account is to be viewed as the recipient's or that of the Service.

Proposed §207.3(a)(2) requires all financial agents to comply with Regulation E, 12 C.F.R. Part 205. The preamble states that this provision is included to ensure that unbanked recipients receive full Regulation E protection, 62 Fed. Reg. at 25575, but the overriding emphasis in the preamble is that this is the Service's account, not the recipient's. For example, the preamble states that "all of the attributes of the account are determined by Treasury, none by the recipient, and the recipient has no ability to change the attributes of the account." It also provides that "financial agents act upon the instructions of the principal, the Treasury, and answer only to the principal." 62 Fed. Reg. at 25573, 25574. Given that the account relationship is between the financial agent and the Service, compliance with Regulation E should not be required.

Alternatively, the exemption for small financial institutions in Regulation E should be available. The statement in the preamble that "the Financial Agent would be required to comply with Regulation E regardless of the requirement imposed by §207.3(a)(2)" is incorrect. Currently, financial institutions with $100 million or less in assets are exempt from the provisions of Regulation E regarding preauthorized transfers. 12 C.F.R. §205.3(c)(7). Only 5.8% of all federally insured credit unions have more than $100 million in assets. Adding this burdensome requirement will greatly increase the cost for credit unions and other small financial institutions to participate, and such costs would ultimately be passed on to unbanked recipients. Without the exemptions, the proposal will result in increasing costs and, possibly, restricting the number of financial institutions that can provide these services. Given the characteristics of the account, requiring compliance with Regulation E –particularly for small financial institutions that would otherwise be exempt– does not serve the purposes of Regulation E or the purposes underlying this proposed regulation.

On the issue of costs, there is no provision in the regulation concerning what costs or transaction fees, if any, a financial institution may charge the unbanked recipient. There are two main concerns. First, it is important to ensure that a credit union participating in the program is able to recoup its cost. Any costs to the credit union will be ultimately borne by its members due to its cooperative structure. Second, it is also important to ensure that unbanked recipients are not charged excessive fees. Consideration should be given to DOT's shouldering some of the financial costs, for example the costs of manufacture and delivery of the debit cards to recipients. The rationale is that, as noted above, this is DOT's account, not that of the recipient.

Proposed §207.3(a)(4) requires the financial agent to issue a debit card to the recipient that allows the recipient to access the account at automated teller machines (ATMs) and point of service (POS) terminals. The preamble explains that this is the only method of access available to the recipient. 62 Fed. Reg. 25572, 25574. The limitation precludes many community development credit unions located in low-income neighborhoods from participating because they do not belong to networks operating ATMs or POS terminals. Removal of this requirement is recommended so that low-income community development credit unions, the financial institutions best equipped to serve the unbanked, are able to participate fully in the program. Finally, as a strategic matter, if EBT recipients were allowed contact with a financial institution through in-person, cash withdrawals –a way of doing business that may be more user friendly for them– that contact would enchance the potential for converting them from unbanked to financial institution customers.

Additional Issues

The proposal cites 12 U.S.C. §§1767 and 1789a as authority for credit unions to participate in the EBT program as financial agents. Proposed §207.2. These provisions of the Federal Credit Union Act grant credit unions the authority to act as fiscal agents of DOT. NCUA's Rules and Regulations currently allow credit unions to establish four types of accounts to act as fiscal agents of DOT. 12 C.F.R. §701.37. This regulation must be amended to allow credit unions to serve as financial agents for EBT. It will be necessary to coordinate the revision of its regulation with Treasury's final regulation, so that NCUA's regulation is consistent with DOT's.

The rule should address the potential liability of a financial institution participating in the program. Some issues that could arise are the potential liability of a financial agent to the recipient or to Treasury for such items as erroneous payment or improper closure of an account.

Thank you for the opportunity to comment on the proposal. In closing, I want to emphasize that credit unions, as member owned and controlled financial institutions, have the experience and a unique ability to reach the individuals and the needs that DOT is addressing with the EBT program. I would welcome the opportunity to discuss the issues raised in this letter, as well as any related issues.

Sincerely,

Norman E. D'Amours
Chairman

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